

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

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|------------------------------|---|----------------------------|
| MICHAEL LAMAR ROLF, SR., |) | |
| |) | |
| Plaintiff, |) | Case No. 10-00005-CV-W-DGK |
| |) | |
| v. |) | |
| |) | |
| MCKEE FOODS (LITTLE DEBBIE), |) | |
| |) | |
| Defendant. |) | |

ORDER

Pending before the Court is Defendant McKee Foods Corporation's Motion for sanctions. Doc. 40. The Court has reviewed this Motion in conjunction with Defendant's Memorandum in Support and Affidavit, Plaintiff's Responses and Defendant's Reply. Docs. 41-42, 52-54. On November 22, 2010, Chief United States District Judge Fernando J. Gaitan, Jr. enjoined Plaintiff from filing any further suit "alleging that products consumed by him were filled with illegal narcotics, illicit drugs, bodily fluids, or the like" without first obtaining leave of court. Doc. 58. However, this Motion was fully-briefed with Plaintiff's Responses prior to this injunction. For the reasons discussed below, Defendant's Motion is GRANTED IN PART AND DENIED AS MOOT IN PART.

Defendant requests the sanction of dismissal pursuant to *Sentis Group, Inc., Coral Group, Inc. v. Shell Oil. Co.*, 559 F.3d 888, 899 (8th Cir. 2009) (describing the standard for obtaining the sanction of dismissal). However, this request is moot because the Court granted Defendant's Motion for summary judgment on September 2, 2010. Doc. 49. Defendant further requests attorney's fees and costs associated with Plaintiff's failure to attend his deposition or provide initial disclosure and interrogatory responses. Defendant has submitted the affidavit of one of its

attorneys of record, Mr. James A. Durbin, who asserts \$1,595.00 in attorney's fees and \$75.00 in costs. Plaintiff's Responses are essentially nonresponsive. Defendant's fees and costs are reasonable, authorized by Rule 37 and justified by Plaintiff's unwarranted failure to participate in discovery. Defendant is awarded \$1,595.00 in reasonable attorney's fees and \$75.00 in costs. Defendant's Motion for the sanction of dismissal is DENIED AS MOOT and its Motion for costs and fees is GRANTED.

IT IS SO ORDERED

Dated: December 10, 2010

/s/ Greg Kays
GREG KAYS
UNITED STATES DISTRICT JUDGE